



October 26, 2000

Ms. Paula A. Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2000-4161

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140764.

The Employee's Retirement System of Texas (the "ERS") received a written request for the following information:

the number of occasions on which [the ERS has] commenced disability retirement payments predicated on some statute other than contained in Texas Government Code Section 814.003. Additionally, advise me of the occasions when [the ERS has] demanded a statement from the retiree's doctor in accompaniment with the Social Security's disability determination letter.

You state that the ERS "does not maintain a record related to either of the requestor's questions." It is well-established that the Public Information Act does not require a governmental body to prepare new information in response to a records request.¹ Open Records Decision No. 342 (1982). Nor is a governmental body required to answer factual questions or to, in effect, respond to legal interrogatories. Open Records Decision No. 347 (1982). The Public Information Act applies only to information already in existence.

¹For example, in Open Records Decision No. 452 (1986), this office concluded that a school district need not comply with a request for a survey of the location, in various schools, of desks painted with lead paint when the school district has not made a survey of the location of the desks.

Furthermore, a governmental body is not required to "compile or extract . . . information if it can be made available" by giving a requestor access to the records themselves. *See* Open Records Decision Nos. 353 (1982), 243 (1980). However, you inform us that:

responses for the requestor can be obtained only from a review of individual retirement information for members and annuitants in the possession of ERS. ERS maintains that this information is excepted from required public disclosure under § 552.101 [of the Government Code] and under Tex. Gov't Code Ann. § 815.503.

Section 552.101 of the Government Code excepts from public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Section 815.503(a) of the Government Code provides that:

Records of members and annuitants under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this chapter.

See also id. § 811.001(15) (defining "retirement system" as the ERS). The requestor does not appear to be within the class of persons to whom the ERS may release confidential retirement information under section 815.503(b). Therefore, we conclude that the ERS is neither required to provide answers to the requestor's queries nor to grant the requestor access to the retirement records responsive to the request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/seg

Ref: ID# 140764

Encl. Submitted documents

cc: Ms. Beverley Mahone
53 Pecan Shadows
Sargent, Texas 77414
(w/o enclosures)